

Francis, Mark

From: Francis, Mark
Sent: Wednesday, September 21, 2011 5:28 PM
To: Marc D. Peters
Cc: Oracle MoFo Service List; Oracle-Google; Google-Oracle-OutsideCounsel; DALVIK-KVN
Subject: RE: Oracle v. Google - Damages Report

Marc,

During today's meet-and-confer call, I explained again that Google is entitled to take Mr. Birger's deposition in connection with his September 12, 2011 report, which was submitted after the close of fact discovery. You informed me that, although Oracle's experts are relying on Mr. Birger's report, Oracle maintains that he is not a "testifying expert" and therefore refuses to make him available for a deposition.

Mark H. Francis
King & Spalding LLP
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New York, NY 10036
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(212) 556-2222 (fax)
mfrancis@kslaw.com

-----Original Message-----

From: Francis, Mark
Sent: Wednesday, September 21, 2011 11:39 AM
To: Marc D. Peters
Cc: Oracle MoFo Service List; Oracle-Google; Google-Oracle-OutsideCounsel; DALVIK-KVN
Subject: RE: Oracle v. Google - Damages Report

Marc,

Mr. Birger submitted a report on September 12th and Google is entitled to depose him regarding that report. Please use the following dial-in for today's call: 877-699-4799, 212-556-2117#

Regards,

Mark

-----Original Message-----

From: Peters, Marc D. [mailto:MDPeters@mofo.com]
Sent: Tuesday, September 20, 2011 7:19 PM
To: Francis, Mark
Cc: Oracle MoFo Service List; Oracle-Google; Google-Oracle-OutsideCounsel; DALVIK-KVN
Subject: RE: Oracle v. Google - Damages Report

Mark,

I don't understand your email. Mr. Birger is not a testifying expert -- again, what is the justification for deposing him?

I'm available at 2pm Pacific tomorrow to discuss, but I'd appreciate an answer to my question beforehand.

My colleagues at BSF will be producing the builds as you requested.

Best regards,
Marc

-----Original Message-----

From: Francis, Mark [mailto:MFrancis@KSLAW.com]
Sent: Tuesday, September 20, 2011 1:19 PM
To: Peters, Marc D.
Cc: Oracle MoFo Service List; Oracle-Google; Google-Oracle-OutsideCounsel; DALVIK-KVN
Subject: RE: Oracle v. Google - Damages Report

Marc,

Oracle submitted Mr. Birger's report last week on September 12th, are you agreeing that it was untimely served? If Oracle agrees to strike the report, there will be no need for a deposition. Otherwise, Oracle should present Mr. Birger for deposition without delay. We again request a copy of all the code and other materials referenced in Mr. Birger's report.

Please provide a time today or tomorrow to meet-and-confer on this issue.

Regards,

Mark

-----Original Message-----

From: Peters, Marc D. [mailto:MDPeters@mofo.com]
Sent: Tuesday, September 20, 2011 10:51 AM
To: Francis, Mark
Cc: Oracle MoFo Service List; Oracle-Google; Google-Oracle-OutsideCounsel; DALVIK-KVN
Subject: RE: Oracle v. Google - Damages Report

Mark,

We are considering your request. Discovery has closed. What is the justification for deposing Mr. Birger?

Best regards,
Marc

-----Original Message-----

From: Francis, Mark [mailto:MFrancis@KSLAW.com]
Sent: Monday, September 19, 2011 7:34 PM
To: Peters, Marc D.
Cc: Oracle MoFo Service List; Oracle-Google; Google-Oracle-OutsideCounsel; DALVIK-KVN
Subject: RE: Oracle v. Google - Damages Report

Marc,

Can you please respond regarding this issue?

Thanks,

Mark

-----Original Message-----

From: Francis, Mark
Sent: Sunday, September 18, 2011 8:45 PM
To: Marc D. Peters
Cc: Oracle MoFo Service List; Oracle-Google; Google-Oracle-OutsideCounsel; DALVIK-KVN
Subject: RE: Oracle v. Google - Damages Report

Marc,

We have not heard back from you regarding this request. Please let us know as soon as possible which day Mr. Berger will be made available for deposition.

In addition, please provide us with copies of the "Rebuild" and "Image" software builds referred to in Mr. Berger's report, as well as copies of all the modified source code files.

Thank you,

Mark

From: Francis, Mark
Sent: Friday, September 16, 2011 11:08 AM
To: Marc D. Peters
Cc: Oracle MoFo Service List; Oracle-Google; Google-Oracle-OutsideCounsel; DALVIK-KVN
Subject: Oracle v. Google - Damages Report

Marc,

In connection with the damages report of Dr. Cockburn that was submitted by Oracle this week, we received a "Summary of Investigation for Damages Expert" by Seon Berger. Can you provide a date next week when Mr. Berger can be made available for deposition in NY?

Thanks,

Mark

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